IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 157 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GARDEN SILK MILLS LTD.

Versus

DEPUTY COMMI. OF INCOME TAX.

Appearance:

1. TAX APPEAL No. 157 of 1999
MR JP SHAH for Petitioner No. 1
MR BB NAIK for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 In this appeal, after hearing the learned Advocates, as suggested by the learned Advocate for the appellant, the following substantial questions of law had been framed by this Court at the time of admission.

"1 Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant was not entitled to Investment Allowance in respect of the additional cost which it suffered in rupee terms because of the fluctuations in the Rates of Foreign Exchange ?

2 Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs.52,23,695/- incurred by the appellant as share issue expenses was capital expenditure and not Revenue expenditure ?"

2 We have heard Mr.J.P.Shah for the appellant and Mr.B.B.Nayak for the respondent. It is not necessary to state the facts as it is common ground between both the sides that the issues arising in this appeal stand concluded.

3 At the time of hearing of this appeal, it has been submitted by the learned Advocates that on the basis of the opinion rendered by the Full Bench of this Court in ITR 178 of 1985, question No.1 which is arising in this appeal is required to be decided in favour of the appellant. In view of the said undisputed legal position so far as question no.1 is concerned, the issue is allowed i.e.the assessee is held to be entitled to investment allowance in respect of additional cost suffered by it due to exchange rate fluctuation.

4 So far as question No.2 is concerned, it has been submitted by the learned Advocates that the Apex Court in the case of Punjab State Industrial Development Corporation Ltd. V/s. Commissioner of Income Tax, 225 ITR 792 has held that the expenditure incurred by the appellant for issue of share is required to be treated as capital expenditure and, therefore, so far as question no.2 is concerned, the issue is required to be decided against the assessee.

5 The orders of the Tribunal and the lower authorities are quashed and set aside in relation to the decision rendered on the first question referred to hereinabove. The appeal is partly allowed accordingly with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhat